

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Justin Huang	Team: Squad #04	CCRB Case #: 202101374	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/18/2021 2:00 AM	Location of Incident: Intersection of 108th Street and 65th Avenue	Precinct: 112	18 Mo. SOL 8/18/2022	EO SOL 8/18/2022	
Date/Time CV Reported Thu, 02/18/2021 3:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/03/2021 11:56 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Christophe Fusaro	00000	936628	112 PCT
2. POM Hassein Albarati	13608	960141	112 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Christophe Fusaro	Abuse: Lieutenant Christopher Fusaro stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Hassein Albarati	Abuse: Police Officer Hassein Albarati stopped the vehicle in which § 87(2)(b) was an occupant.	
C.LT Christophe Fusaro	Abuse: Lieutenant Christopher Fusaro pointed his taser at § 87(2)(b)	
D.POM Hassein Albarati	Abuse: Police Officer Hassein Albarati drew his gun.	
E.LT Christophe Fusaro	Abuse: Lieutenant Christopher Fusaro questioned § 87(2)(b)	
F.LT Christophe Fusaro	Abuse: Lieutenant Christopher Fusaro threatened to arrest § 87(2)(b)	
G.LT Christophe Fusaro	Force: Lieutenant Christopher Fusaro used physical force against § 87(2)(b)	
H.LT Christophe Fusaro	Discourtesy: Lieutenant Christopher Fusaro acted discourteously toward § 87(2)(b)	
I.POM Hassein Albarati	Discourtesy: Police Officer Hassein Albarati acted discourteously toward § 87(2)(b)	

Case Summary

On February 18th, 2021, § 87(2)(b) filed this complaint with IAB, generating log § 87(2)(b). On March 3rd, 2021, the CCRB received this complaint from IAB.

On February 18th, 2021, at approximately 2:00AM, § 87(2)(b) was double parked at the intersection of 108th Street and 65th Avenue in Queens. Lieutenant Christopher Fusaro and Hassein Albarati of the 112th Precinct stopped him (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). Lt. Fusaro pointed his taser at § 87(2)(b) upon approach (**Allegation C: Abuse of Authority**, § 87(2)(g)). PO Albarati drew his firearm upon approach (**Allegation D: Abuse of Authority**, § 87(2)(g)). Lt. Fusaro asked § 87(2)(b) if he had been drinking (**Allegation E: Abuse of Authority**, § 87(2)(g)). Lt. Fusaro threatened to arrest him (**Allegation F: Abuse of Authority**, § 87(2)(g)). Lt. Fusaro used physical force against § 87(2)(b) (**Allegation G: Force**, § 87(2)(g)). Lt. Fusaro and PO Albarati allegedly threw § 87(2)(b) documents into § 87(2)(b) vehicle (**Allegations H and I: Discourtesy**, § 87(2)(g)).

§ 87(2)(b) was issued three summonses for tinted windows, making an illegal U-turn, and failing to comply with a lawful order (**BR01-03**).

The CCRB received BWC footage regarding the incident (**BR04**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Lieutenant Christopher Fusaro stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Police Officer Hassein Albarati stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) (**BR05**) stated he was completing a food delivery and was double parked with the engine running. § 87(2)(b) drives a black 2017 Audi A4 with New York plates and tinted windows. § 87(2)(b) noticed a police car parked directly behind him and then heard a voice over the police car's loudspeaker say, "Roll down your windows." § 87(2)(b) only rolled down the driver's side and front passenger side windows because it was cold outside. The voice on the loudspeaker repeated the command 2-3 more times. § 87(2)(b) then rolled down all the windows of his car. After a few minutes, Lt. Fusaro and PO Albarati exited their vehicle, approached § 87(2)(b) vehicle, and stood by the driver's side door.

Lt. Fusaro and PO Albarati (**BR06-07**) both stated that they saw § 87(2)(b) vehicle make an illegal U-turn and possessed tinted windows, for which he was later summonsed.

PO Albarati's and Lt. Fusaro's BWC footage does not capture the alleged U-turn but does capture their interaction with § 87(2)(b) regarding his window tint. Footage from PO Albarati (**BR04**) at 04:55 shows PO Albarati measuring the driver side window of § 87(2)(b) vehicle with a window tint meter. PO Albarati asks § 87(2)(b) what the reading is on the meter and § 87(2)(b) says "17." PO Albarati then walks back to his vehicle and continues writing summonses.

New York Vehicle Traffic Law Section 375.12(b) (**BR08**) states that "no person shall operate any motor vehicle upon any public highway, road or street the side wings or side windows of which on either side forward of or adjacent to the operator's seat are composed of, covered by or treated with any material which has a light transmittance of less than seventy percent."

Due to a lack of corroborating testimony, the investigation could not determine whether § 87(2)(b) made an illegal U-turn or if he was double parked. However, § 87(2)(b) stated in his interview that his vehicle had tinted windows and BWC footage confirmed that PO Albarati measured the window tint on § 87(2)(b) vehicle prior to writing a summons. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (C) Abuse of Authority: Lieutenant Christopher Fusaro pointed his taser at § 87(2)(b).

§ 87(2)(b) (BR05) stated that upon approaching the driver side window of his vehicle, Lt. Fusaro drew his taser and pointed it at § 87(2)(b). Lt. Fusaro then asked § 87(2)(b) for his identification. At some point during the incident, Lt. Fusaro holstered his taser, but § 87(2)(b) did not know exactly when this occurred.

Lt. Fusaro's BWC footage (BR04) shows that at 01:00, Lt. Fusaro draws and points his taser at the driver's side window while walking towards § 87(2)(b) vehicle. At 01:04, § 87(2)(b) places his hands out the window of his vehicle while Lt. Fusaro continues to point the taser and approach § 87(2)(b). At 01:14, Lt. Fusaro holsters his taser while standing in front of § 87(2)(b).

Lt. Fusaro (BR06) drew his taser and pointed it at § 87(2)(b) upon his approach to § 87(2)(b) vehicle due to concerns for his and his partner's safety. Lt. Fusaro's reasons for his safety concerns included § 87(2)(b) refusal to roll down all his windows and show his hands despite numerous commands to do so as well as § 87(2)(b) appearing to reach for something in the front console, although Lt. Fusaro could not see where § 87(2)(b) hands were or what he was reaching for. Lt. Fusaro holstered his taser as soon as § 87(2)(b) showed his hands.

NYPD Patrol Guide Procedure 221-08 (BR09) states, "It is strictly prohibited to use the CEW on persons as a form of coercion or punishment and on persons who passively resist (e.g., going limp, offering no active physical resistance). CEWs should only be used against persons who are actively resisting, exhibiting active aggression or to prevent individuals from physically injuring themselves or other person(s) actually present." Active resistance is defined as "physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody." Active aggression is defined as a "threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent."

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Hassein Albarati drew his gun.

§ 87(2)(b) stated that upon approaching the driver side window of his vehicle, PO Albarati drew his gun from his holster but did not point it at § 87(2)(b).

PO Albarati (BR07) did not remember if he drew his taser or his firearm upon approaching § 87(2)(b) vehicle. § 87(2)(b) stated that he pointed one of the weapons at § 87(2)(b) while walking toward his vehicle. Lt. Fusaro (BR06) stated that PO Albarati drew his firearm when approaching the vehicle.

BWC footage does not capture which weapon PO Albarati was holding at the time. At 00:48 in PO Albarati's BWC video (BR04), PO Albarati exits the police vehicle, hold a flashlight with his left hand, and starts walking toward § 87(2)(b). PO Albarati does not appear to be pointing a taser or a firearm at § 87(2)(b) but it is unknown what he is holding in his right hand. Lt. Fusaro's BWC footage (BR04) also does not capture what PO Albarati was holding, as Lt. Fusaro was facing away from PO Albarati and stood in front of him.

§ 87(2)(g)

Allegation (E) Abuse of Authority: Lieutenant Christopher Fusaro questioned § 87(2)(b)

Lt. Fusaro's BWC footage (BR04) shows that at 03:54, Lt. Fusaro asks § 87(2)(b) if he had been drinking while questioning § 87(2)(b) for his driver's license, and § 87(2)(b) says no.

Lt. Fusaro (BR06) did not recall whether he asked § 87(2)(b) if he had been drinking, or if he smelled alcohol. Lt. Fusaro was then shown BWC footage and stated that he asked this question due to § 87(2)(b) being irate and yelling at the officers. Lt. Fusaro did not remember if he noticed any other signs of intoxication from § 87(2)(b).

NYPD Patrol Guide procedure 212-11 (BR14) states that officers may ask accusatory or pointed questions upon founded suspicion that criminal activity is afoot. Founded suspicion is defined as an indication based on observable conduct or reliable hearsay.

§ 87(2)(g)

§ 87(2)(b) Lt. Fusaro did not provide any specific observations that led him to believe § 87(2)(b) was intoxicated. § 87(2)(g)

Allegation (F) Abuse of Authority: Lieutenant Christopher Fusaro threatened to arrest § 87(2)(b)

§ 87(2)(b) (BR05) stated that after Lt. Fusaro and PO Albarati got to and stood by the driver side window of his vehicle, Lt. Fusaro asked § 87(2)(b) for his identification. § 87(2)(b) refused to hand over his identification because he had done nothing wrong. PO Albarati and Lt. Fusaro repeated the request for § 87(2)(b) identification approximately three times. § 87(2)(b) continued to refuse to hand over his license. Lt. Fusaro then opened his car door and told him to step out of the vehicle. Lt. Fusaro also stated that if § 87(2)(b) did not step out, then he would take him back to the police department.

Lt. Fusaro (BR06) told § 87(2)(b) that refusing to hand over his identification during a lawful car stop could result in an arrest for obstruction of governmental administration. Lt. Fusaro also listed his refusal to lower the windows and reaching for the console as reasons for obstruction of governmental administration. § 87(2)(b) again refused and repeated that he did not do anything wrong. Lt. Fusaro repeated his statement regarding arrest approximately three times. Lt. Fusaro did not remember if PO Albarati took part in this conversation. PO Albarati's (BR07) testimony corroborates Lt. Fusaro's testimony.

New York Vehicle and Traffic Law 509.01 (BR10) states that no person shall operate or drive a motor vehicle without a license.

NYPD Patrol Guide Procedure 209-09 (BR11) states that when issuing summonses, officers are allowed to remove violators to their command if doubt exists concerning their identity.

NY Penal Law 195.05 (BR12) states that a person is guilty of obstruction of governmental administration when one “intentionally obstructs, impairs, or perverts the administration of law” using “intimidation, physical force or interference, or by means of any independently unlawful act.”

§ 87(2)(g)

Allegation (G) Force: Lieutenant Christopher Fusaro used physical force against § 87(2)(b)

§ 87(2)(b) (BR05) stated that after he refused to provide his identification, Lt. Fusaro opened the driver’s side door and attempted to grab § 87(2)(b) § 87(2)(b) then provided his license to Lt. Fusaro, and both Lt. Fusaro and PO Albarati returned to their vehicle.

Lt. Fusaro (BR06) stated that after § 87(2)(b) refused numerous commands to provide his driver’s license and ignored Lt. Fusaro’s statement that § 87(2)(b) could be arrested, Lt. Fusaro opened § 87(2)(b) car door and planned to remove § 87(2)(b) from the vehicle to place him under arrest for obstructing governmental administration. Lt. Fusaro reached for and grabbed § 87(2)(b) wrists to take him out of the vehicle. A few seconds later, § 87(2)(b) provided his driver’s license to Lt. Fusaro, and Lt. Fusaro and PO Albarati went back to their vehicle.

BWC footage (BR04) largely corroborates Lt. Fusaro’s testimony. At 03:21, Lt. Fusaro grabs § 87(2)(b) left wrist with his left hand and tells § 87(2)(b) that he is going to be arrested for obstructing governmental administration. § 87(2)(b) then takes out his driver’s license, and Lt. Fusaro takes the license from § 87(2)(b) At 03:33, Lt. Fusaro lets go of § 87(2)(b) wrist.

NYPD Patrol Guide Procedure 221-01 (BR13) states that “any application or use of force must be reasonable under the circumstances.”

§ 87(2)(g)

§ 87(2)(b) Lt. Fusaro ceased his actions as soon as § 87(2)(b) provided his driver’s license. § 87(2)(g)

Allegation (H) Discourtesy: Lieutenant Christopher Fusaro acted discourteously toward § 87(2)(b)

Allegation (I) Discourtesy: Police Officer Hassein Albarati acted discourteously toward § 87(2)(b)

§ 87(2)(b) (BR05) stated that he called 911 to file a complaint against Lt. Fusaro and PO Albarati. While he was on the phone, Lt. Fusaro and PO Albarati tried to hand three summonses to § 87(2)(b) § 87(2)(b) told the officers to get away from him. Both officers then threw the summonses into § 87(2)(b) vehicle, which landed on the dashboard of the car, and walked back to the police vehicle. The officers then drove off.

PO Albarati's BWC (**BR04**) shows that at 19:12, PO Albarati attempts to hand back § 87(2)(b) documentation along with summonses and § 87(2)(b) refuses to take them. At 19:16, Lt. Fusaro takes the documents from PO Albarati and puts them down on the left corner of § 87(2)(b) vehicle dashboard. PO Albarati and Lt. Fusaro then walk back to their vehicle.

Lt. Fusaro (**BR06**) stated that § 87(2)(b) refused to take his documents and summonses. Lt. Fusaro took the documents and placed them on the dashboard of § 87(2)(b) vehicle. PO Albarati and Lt. Fusaro then walked away. PO Albarati (**BR07**) stated that he placed the summonses on the front dashboard of § 87(2)(b) vehicle and walked away alongside Lt. Fusaro.

Based on BWC footage, the investigation determined that Lt. Fusaro did not throw the documents into the vehicle and instead put them down on the dashboard before walking away. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (**BR15**).
- PO Albarati has been a member of service for six years and this is the first CCRB complaint to which he has been a subject (**BR16**).
- Lt. Fusaro has been a member of service for seventeen years and has been a subject in fifteen CCRB complaints and thirty-seven allegations, none of which have been substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On April 22nd, 2022, a FOIL request was submitted to the Office of the Comptroller. Results will be attached upon receipt (**BR18**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: _____ 4 _____

Investigator:	<u>Justin Huang</u>	<u>Investigator Huang</u>	<u>04/25/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Raquel Velasquez</u>	<u>IM Raquel Velasquez</u>	<u>04/25/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date